In The Supreme Court of the United States.

OCTOBER TERM, 1900.

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

MOTION FOR WRIT OF *CERTIORARI*.

And now comes William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, by M. H. Boutelle and Charles C. Lister, his counsel, and moves this Honorable Court that it shall by *certiorari*, or other proper process, directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, require said Court to certify to this Court, for its review and determination, a certain cause in said Court of Appeals lately pending, wherein the said William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), was appellant and Edward P. Allison, et al., were appellees, and to that end now tenders herewith his petition, together with a certified copy of the entire record in said cause in said Circuit Court of Appeals. M. H. Boutelle.

Counsel for William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation).

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

Petitioner.

IN THE MATTER OF THE PETITION FOR WRIT OF *CERTIORARI* REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT TO CERTIFY TO THE SUPREME COURT FOR ITS REVIEW THE CASE OF

W. E. HALE, Receiver.

Appellant,

vs.

EDWARD P. ALLISON, *et als.*

Appellees.

To the Honorable The Supreme Court of the United States:

The petition of W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), respectfully shows to this Honorable Court as follows:

That the Northwestern Guaranty Loan Company was, at all times hereinafter mentioned, a corporation organized under the general laws of the State of Minnesota.

That the laws of that state, and more particularly the Constitutional provisions thereof, impose personal liability upon the stockholders of all corporations of the class of said Northwestern Guaranty Loan Company, for the corporate debts, in an amount not exceeding the amount of the par value of the stock held by each.

That the liability thus created as interpreted by the decisions of the highest courts of that state is contractual, runs to all and several the corporate creditors in common, and

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contemplates the creation of a fund for the equal benefit of all such creditors.

That the remedial laws of said state, as interpreted by the highest court thereof, contemplate primary jurisdiction for the purpose of enforcing this stock liability in the courts of corporate domicile, and for that purpose provide for the institution therein of an equitable action by corporate creditors for obtaining an account of the debts and assets of the corporation, determining the deficiency, if any, of the latter, and apportioning such deficiency amongst all stockholders in common, according to their respective holdings of stock, and not exceeding in any event the maximum liability provided by law.

That by said remedial laws provision is further made in analogy to the rules and practice of courts of equity for giving notice of the pendency of such case to all creditors and limiting the time within which such creditors shall intervene therein or be barred from participation in the recovery and fund thereby contemplated.

That further provision is made by said laws authorizing and empowering the court to appoint a receiver or receivers for the purpose of effectuating and carrying out the purposes thereof.

As further interpreted by the courts of that state the provisions incorporated in the laws aforesaid, both those imposing the liability and those prescribing the conditions whereon it may be made available, are impliedly incorporated in the contract consummated by the stockholders in the act of subscribing or taking stock and mutually binding upon stockholder and creditor alike. In consequence whereof it is held that the creditor may avail himself of the liability in no other manner than in a proceeding calculated to preserve and protect the rights of all creditors in common and may not proceed in his own individual behalf.

And it is further held in consequence of the same contractual theory that the ascertainments contemplated to be made by the court in the original proceeding by the creditors, upon which the liability may be made available, viz.: the debts, assets, the deficiency of the latter and the amount in which all stockholders in common shall be assessed to make good such deficiency, are final and conclusive on all corporate stockholders whether parties to the original proceeding and served with process therein or not.

Your petitioner further avers that in 1893, in proper proceedings had to that end in the courts of the State of Minnesota, and in accordance with the laws of that state, the Northwestern Guaranty Loan Company was adjudged insolvent and a receiver appointed for the purpose of winding up its affairs.

That thereafter, and in conformity to the local laws of that state, hereinbefore mentioned, a suit was duly instituted by and on behalf of the several creditors of that corporation, against the corporation, its general receiver, and all and several the stockholders thereof.

That pursuant to the order of the Court therein some six or seven hundred creditors from many and diverse states holding claims and demands against the corporation aggregating upwards of three million dollars duly intervened therein.

That process issued against the corporation, its general receiver in insolvency, and all and several the stockholders residing within the State of Minnesota.

That thereafter such proceedings were had in conformity to the laws of that state in the cause last aforesaid, that a decree was entered therein adjudging and decreeing, amongst others, that the maximum liability provided by the law of that state, as hereinbefore stated, be enforced against all corporate stockholders in common, and that to that end your petitioner

was duly appointed and qualified as receiver and was duly authorized and empowered to take such steps as might be necessary in the premises for the purpose of enforcing and collecting such ascertained liabiiity.

That the indebtedness ascertained by said decree as due and owing to the creditors intervening therein was upwards of three million dollars, as aforesaid, for which judgment was duly rendered against the said corporation.

That the assets and securities in anywise available for the payment of said indebtedness, as ascertained by said decree, was four hundred and fifty thousand dollars, and the deficiency upwards of two million five hundred thousand dollars.

That the total par value of outstanding stock (and therefore the maximum measure of stock liability) was one million two hundred and fifty thousand dollars, or less than one-half the ascertained deficiency.

Your petitioner further avers that said stock was, at all the times herein referred to, held by some five hundred different parties and corporations of whom approximately five-sixths in amount and upwards of four hundred in number resided, during all the times herein mentioned, without the State of Minnesota.

That the residences of such stockholders embrace many and diverse jurisdictions, including herein the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, and other states not here necessary to mention.

That subsequent to the proceedings had and taken, as hereinbefore stated, in the said courts of Minnesota, and the rendition and entry of the decree in that cause, as hereinbefore stated, various actions and proceedings were instituted in several of the aforesaid jurisdictions outside the State of Minnesota for the purpose of enforcing the aforesaid stockholders' liability.

That amongst said several proceedings, so instituted as aforesaid, an original bill in equity was filed in the United States Circuit Court in and for the Eastern District of Pennsylvania, by a judgment creditor of the said Northwestern Guaranty Loan Company, in behalf of itself and all other creditors who should join or participate therein, and against all and several the stockholders of that corporation residing in and citizens of the commonwealth of Pennsylvania.

That thereafter such proceedings were had in said cause that a demurrer was interposed therein, by and on behalf of the several defendants, and a decree entered in said Circuit Court dismissing complainant's bill, from which an appeal was thereafter perfected to the Court of Appeals of the Third Circuit. That upon said appeal the last named Court of Appeals held, substantially, that no jurisdiction existed in a court outside of the State of Minnesota to enforce in an original proceeding the liability imposed on corporate stockholders by the Minnesota laws; that those laws contemplated investing the courts of the domicile with primary jurisdiction in the premises, and that the proceedings to determine the necessity for and amount in which the liability should be enforced should be had in such domiciliary courts, and thereafter as against nonresident stockholders relief might be obtained in an auxiliary proceeding in equity against stockholders in foreign jurisdictions.

(Elkhart Natl. Bank vs. Northwestern Guaranty Loan Co., 87 Fed. Rep. 252.)

That the holding of the said Court of Appeals of the Third Circuit, in so far as it adjudicated and determined that an original bill would not lie in a foreign jurisdiction for the purpose of enforcing liabilities of the class in question, is in substantial accord with the similar conclusions of the Court of Appeals of the First Circuit in National Bank vs. Sayward, 91 Fed. Rep. 443.

That in accordance with the holding of the Court of Appeals of the Third Circuit above, determining, as aforesaid, that a remedy might be had by auxiliary proceeding in equity after a decree of the domiciliary court determining the necessity for and amount in which all stockholders should be held to contribute, to enforce that decree, your petitioner caused to be filed in the Circuit Court for the Eastern District of Pennsylvania such an auxiliary bill against the several stockholders, residents and citizens of that jurisdiction.

That thereafter such proceedings were had that the several defendants in said bill interposed common demurrers, challenging, (1) the jurisdiction of a court of equity, (2) the right of your petitioner to sue, (3) the effect of the Minnesota decree, and (4) the right to relief on the merits, all as will more fully appear from the certified copy of the record herewith produced and accompanying this application. That upon the hearing of said demurrers it was held and determined by the Circuit Court that no jurisdiction in equity existed, no reference being made in the decision to the conclusions and the previous holding of the Court of Appeals of that circuit in the case of Elkhart National Bank vs. Northwestern Guaranty Loan Company, *supra*, growing out of the insolvency of the same corporation, involving the same liability and the same foreign laws.

That upon the aforesaid determination of the Circuit Court, a decree was entered in said cause dismissing your petitioner's bill without prejudice, and therefrom an appeal was duly taken to the Court of Appeals of the Third Circuit, as will more fully appear from the record herein.

That upon said record the cause came on for hearing before the Court of Appeals of the Third Circuit and resulted in an affirmance of the decree of the Circuit Court for want of jurisdiction in an equitable proceeding and practically de-

ciding that the several demurrers as presented might have been sustained upon the merits without regard to the jurisdictional feature.

From the decision of the Court of Appeals last referred to, your petitioner presents this application for *certiorari* directed to the Court of Appeals of the Third Circuit.

The grounds of this application are as follows:

First. The importance of the general questions involved herein, and

Second. The hopeless and irreconcilable confusion evidenced by the decisions in the various circuits, between the Circuit Courts of Appeals, as well as the Circuit Courts and Circuit Courts of Appeals of different circuits.

Your petitioner further shows and states to the court that suits or actions are now pending in all the several jurisdictions hereinbefore referred to, involving the questions here sought to be reviewed and growing out of the insolvency of this same corporation.

Your petitioner further shows that in a certain action heretofore instituted at law, by your petitioner, as receiver as aforesaid, in the Circuit Court for the District of Massachusetts to enforce the liability in question, the decision of the court practically denied a right or remedy to enforce the liability in any form of action whatsoever. (Hale vs. Hardon, 89 Fed. Rep. 283.)

That on writ of error to the Circuit Court of Appeals of the First Circuit, that decision was reversed by a divided court and the right held enforceable and the remedy held properly conceived.

(Hale vs. Hardon, 95 Fed. Rep. 747.)

That thereafter, and subsequent to the last decision of the Court of Appeals of the First Circuit, in a case involving similar laws and presenting similar questions arising in the

Circuit Court for the Eastern District Pennsylvania wherein the opinion was delivered by Mr. Circuit Judge Dallas (by whom the opinion in the Court of Appeals in this case was written), the Circuit Court of Pennsylvania expressly declined to follow the Circuit Court of Appeals of the First Circuit and denied the right to enforce the liability. (Wigton vs. Bosler, 102 Fed. Rep. 70.)

Your petitioner further shows that the decision of the Court of Appeals in the case here sought to be reviewed practically follows Wigton vs. Bosler and is diametrically opposed in this regard to the decision of the Court of Appeals of the First Circuit in Hale vs. Hardon, *supra*.

Your petitioner further avers that said cause, as presented by the bill and demurrers to the Circuit Court and Circuit Court of Appeals herein, covered and embraced, as will more fully appear from the accompanying record, on the merits, the following propositions, viz.:

1st. The right of your petitioner, as receiver, to sue in a jurisdiction outside of that by which he was appointed.

2nd. The effect, as conclusive or otherwise, of the proceedings had in the courts of corporate domicile on non-resident stockholders.

3rd. The right to enforce a liability of this class in any method or form of procedure in a jurisdiction outside of that by which the corporation was created.

And your petitioner further avers that each and all of said several questions are involved in various litigations now pending in the Federal Courts of the various jurisdictions hereinbefore indicated, as well as in the cause at bar.

Your petitioner further avers that in each of said causes, as well as that here pending, the first question above, viz.: the right of the receiver to sue, has presented and given rise to conflict of opinion, based upon the proper interpretation of

previous decisions of this court, notably Booth vs. Clark, 17 How. 323, and Relfe vs. Rundell, 103 U. S. 322, as indicated by the opinion of the Court of Appeals in the cause here sought to be reviewed, as well as the Court of Appeals of the First Circuit in the case therein decided and hereinbefore referred to.

That upon the second and third questions above, viz.: the effect of the proceedings of the Minnesota Court, the case in principle is, as your petitioner believes, covered by the decisions and precedents of this Honorable Court, but in the absence of direct precedent impracticable distinctions are suggested rendering the principles enunciated by this court inapplicable.

Your petitioner further avers that jurisdiction in equity in the case at bar was clearly sustainable on each and all the following grounds, viz.:

1st. That the right asserted and sought to be enforced as determined and interpreted by the local law of the state by which the same was so created was equitable in character.

2nd. That the proceeding had for its end and object the enforcement of an equitable decree, and that within the principles announced by this Honorable Court, in the case of Hancock National Bank vs. Farnum, 176 U. S. 640, the decree rendered in the local courts of Minnesota, while not equivalent to a personal judgment against stockholders not served with process or appearing in that cause, was a *quasi* decree against all corporate stockholders, in so far as it determined the necessity for and amount in which all stockholders should be held to contribute, and was therefore a decree which a court of equity possessed jurisdiction to enforce.

3rd. That sufficient ground for the interposition of equity was shown in the common origin of the claims and the similarity of the questions of law and fact involved therein, thus

bringing the case clearly within that branch of equitable jurisdiction having for its end and object the prevention of a multiplicity of suits.

Your petitioner further avers that error was assigned, as more fully appears from the record accompanying this petition, in the Court of Appeals, to the denial of jurisdiction in equity upon each of the grounds aforesaid, and to the refusal of the court to sustain the bill on the merits.

That jurisdiction on the first two grounds was clearly held in the previous decision of the same Court of Appeals in Elkhart National Bank vs. Northwestern Guaranty Loan Company, *supra*, in conformity to the direction whereof the present suit was instituted in that circuit.

That upon the third ground, without regard to numerous precedents which might be cited, the case was fully covered by the decision of the Court of Appeals of the Sixth Circuit in Bailey vs. Tillinghast, 99 Fed. Rep. 801, to which the decision in the cause under consideration is diametrically opposed on the question of jurisdiction.

Your petitioner further avers that this cause, as presented to the Court of Appeals of the Third Circuit, involving the right of a receiver appointed by a court of a foreign jurisdiction to join, in one proceeding, demands against a number of stockholders having the same origin and presenting similar questions of law and fact, is substantially parallel with the question certified by the Court of Appeals of the Second Circuit to this Honorable Court, but not found necessary to be answered, in the case of McDonald vs. Williams, reported in 174 U. S. 397.

Your petitioner further avers that all and several the questions herein suggested may be appropriately passed upon and finally decided by this court on review of the decision of the Court of Appeals of the Third Circuit herein. And

that by such decision an immense amount of litigation now pending and undetermined in various of the Circuit Courts of the United States growing out of the same insolvency as that here involved, and presenting the same questions of law and fact, will be relieved of the conflict and embarrassment arising out of the diversity of opinion announced by the various courts in these causes, as hereinbefore stated. That unless said questions be so finally passed upon and determined, the enforcement of the rights of the creditors of this insolvent corporation is confronted by a multitude of litigation, in and of itself practically prohibitive, by reason of the inability of the various courts to determine and agree on the basic principles involved.

Your petitioner further shows and states to the Court, that jurisdiction in the said cause here under consideration was invoked on the ground of diversity of citizenship, and that the decision of the Court of Appeals under the Act of Congress creating that Court, approved March 3, 1891, is final.

WHEREFORE, Your petitioner respectfully prays that a Writ of *Certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the said cause therein entitled W. E. Hale, as Receiver, Appellant, vs. Edward P. Allison, et al., Appellees, to the end that the said case may be reviewed and determined by this Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate. And in conformity with Section 6 of the Act of Congress, entitled "An act to establish

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Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, and that said decision and judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Couft.

And your petitioner will forever pray, etc.

W. E. HALE,

Receiver for the collection and enforcement of the liability of stockholders.

By M. H. Boutelle

Attorney and Counsel for Petitioner.

STATE OF MINNESOTA,

ss.

COUNTY OF HENNEPIN,

M. H. BOUTELLE, being duly sworn, says that he is one of the attorneys and of counsel for William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), the petitioner above named, and as such had personal charge for him of the case in the foregoing petition mentioned in the Circuit Court of the United States for the Eastern District of Pennsylvania and in the United States Circuit Court of Appeals for the Third Circuit; that he has read the said petition by him subscribed; and that the facts therein stated are true to the best of his information and belief.

M. H. Boutelle

Sworn to and subscribed before me this 21st day of February, 1901.

Nathan H. Chase

Notary Public, Hennepin, County, Minnesota.

In The Supreme Court of the United States.

OCTOBER TERM, 1900.

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

Petitioner.

STATEMENT AND BRIEF OF PETITIONER.

The present application for a writ of *certiorari* to the Court of Appeals for the Third Circuit has seemed to counsel to present the only feasible method of conclusively settling and ascertaining certain questions common to litigation pending in the Federal Courts of a comparatively large number of different jurisdictions.

The Statement of Facts in the accompanying petition explanatory of the status of this litigation, together with the marked diversity of opinion which has characterized the decisions of the various Circuit Courts and Courts of Appeals, has been attempted to be made sufficiently full in matter of detail to justify the present application without resorting to any extended brief in support thereof.

For upwards of four years these causes have been in constant litigation in all the several jurisdictions referred to in the accompanying petition, and after repeated hearings, both before Circuit Courts and Circuit Courts of Appeals, the fundamental principles and questions involved are still far from final and conclusive adjudication.

Diversity and disagreement between different courts and judges over the general questions common to this litigation as a whole, has encouraged successive and repeated contests, until the prospect of ultimate enforcement of the rights of creditors of this insolvent corporation appears possible only by frittering away the benefits to be derived therefrom in endless controversy in the courts.

With these general questions disposed of, further controversy is reduced to a minimum.

In the present aspect of these causes sooner or later this Court must inevitably interpose and dispose, once for all, of the irreconcilable differences between the judges of the different circuits.

So strongly marked and firmly established are these differences that it is almost possible to forecast at the present time the outcome of a particular case by the personnel of the particular judge or judges composing, for the time being, the Court wherein that case is pending.

Aside from this, speaking without regard to any particular circuit so as not to be construed as insinuating anything against any particular judge or court, one of the most stubborn elements encountered in these cases has been that of local prejudice against the enforcement of a foreign liability such as that here involved.

This element has manifested itself in many ways during the progress of these causes, amongst which may be noted the marked disposition to strain every possible technical point to defeat a remedy instead of applying the wholesome rule *ubi jus ibi remedium*.

If we are right in principle in these causes we should have the benefit of an enforcement of the appropriate remedy without the compulsion of exhausting that benefit in endless litigation.

If we are wrong in principle, the creditors of this insolvent corporation are not benefited and the stockholders are wronged by perpetuating the controversy.

Under these circumstances, as the courts below have been unable to reach any uniform conclusion on these general principles and the whole subject is still considered by the stockholders at least as open, we have felt justified in asking this Court to review and settle these conflicting opinions.

It may, and doubtless will, be insisted in opposition to this application that, conceding all that is claimed for the conflict of opinion upon the general questions involved, the present is not an appropriate proceeding wherein to attempt such a review as that sought.

Hereunder it may be suggested that one single question was decided in the present cause, to wit: the right to proceed against a number of stockholders in equity, and that the general principles or merits were not considered.

The answer to this technical objection is that the cause being in equity the entire record is before the Court for review.

The Court *may* in any event review the entire record, and, in case the reason assigned for the decree below was found erroneous, viz.: that there was no jurisdiction in equity because of the existence of an adequate remedy at law, must so review the record within the rule enunciated in Riddings vs. Johnson, 128 U. S. 212-218, as follows:

"Therefore, if there was nothing more in the case than the question of jurisdiction, we should be obliged to reverse the decree at once, and send the case back for further proceedings. But, on an appeal in an equity suit, the whole case is before us, and we are bound to decide it so far as it is in a condition to be decided. The bill was dismissed on demurrer for want of jurisdiction. Though the court below may have erred in dismissing it on this ground, yet if we can see that there is any other ground on which it ought to be dismissed, for example, want of equity on the merits, we must affirm the decree. This makes it necessary that we should go into a further examination of the case made by the bill and supplemental bill."

The abstract and isolated question of jurisdiction should not be made an obstacle to the present application.

It is only necessary to call the attention of the Court to the opinion of the Court of Appeals below in the following respect, viz.:

"Several demurrers were interposed, but it is not necessary to refer to them separately or in detail. The points urged in their support are in substance: (1) That the complainant's appointment as Receiver by the Minnesota Court did not entitle him to sue as such in the Circuit Court of the United States for the Eastern District of Pennsylvania. (2) That the defendants here were not bound by the proceeding in Minnesota. (3) That irrespective of any other question the suit in equity was not maintainable because there was an adequate remedy by separate action at law against each of the stockholders who were joined as defendants in the bill.

"We strongly incline to the opinion that the two points first stated might well have been sustained. This Receiver is but a creature of the Court which appointed him and no legal title is vested in him. Therefore, his asserted right to sue in another jurisdiction cannot be conceded unless the law as declared in Booth vs. Clark (17 How. 322) has been changed in this respect by the decision in Rolfe vs. Rundle (103 U. S. 322), and we are not prepared to say that it has been.

Hale vs. Hardon, 87 Fed. Rep. 283.

"None of the defendants was a party to the proceeding in the Minnesota Court, and while we do not decide the matter, because it is unnecessary to do so, it is not to be inferred that we assent to the proposition that because stockholders of a corporation are so very privy in interest as to be bound by a judgment against it, they are also bound by a decree that they individually shall wholly or partially pay its indebtedness, although they have never had a day in Court to controvert the existence of the facts upon which their obligation to do so is dependent."

to demonstrate that that court has substantially committed itself on the merits of the general propositions involved and that further litigation in any form of procedure whatsoever is only postponing an application to this court to review and finally pass upon the principles involved.

The whole case was submitted to the Court of Appeals below after exhaustive arguments addressed, not only to the question of jurisdiction in equity, but also the general principles involved in the merits, with the result as indicated in the portion of the opinion quoted, *supra*.

No useful end can be subserved either for the parties or the Court to commence actions at law *de novo* in that circuit.

The Circuit Court of that Circuit has already indicated in Wigton vs. Bosler, 102 Fed. 70, its dissent from the decision of the Circuit Court of Appeals of the First Circuit in Hale vs. Hardon, 95 Fed. 447.

This, coupled with the decision of the Court of Appeals in the case at bar excerpted from *supra*, is sufficiently indicative of the fact that further litigation there must be had, if at all, only as a stepping stone to a future application to this Court in another case instead of in that at bar.

A further pertinent reason for the present application grows out of the question of the statute of limitations.

We understand that any further action in the jurisdiction indicated is to be met by this additional supposed defense. The situation presented in this regard is as anomalous as it is interesting.

The original suit instituted in the Third Circuit was, as explained in our petition, Elkhart National Bank vs. Northwestern Guaranty Loan Company. In deciding that case (87 Fed. Rep. 252) the Court of Appeals of the Third Circuit, while denying jurisdiction in an original proceeding, used the following pertinent language:

"The laws of Minnesota impose on such stockholders a personal liability equal to the par value of the stock held, and render them subject to call for payment of so much thereof as may be necessary to pay creditors after the company's assets have been exhausted. * * *

"The plaintiff says in the brief furnished us: 'The laws of Minnesota impose the ordinary stockholders' liability, and prescribe an essentially equitable remedy for its enforcement.' This is true; and the remedy seems to be fully adequate to secure the creditors' interests, under all circumstances. * * *

"The statute seems to contemplate a proceeding against all stockholders, in corporations organized under the laws of the state, and a final decree therein. * * *

"Of course if the decree is conclusive the Court could not enforce it against foreign stockholders, but in such case it might be enforced by auxiliary equity proceedings where the stockholders reside."

Conformably to this holding, which was then and still is believed to correctly express the rule of procedure, the auxiliary

bill in the case at bar was filed and resulted in a denial, both by the Circuit Court and Circuit Court of Appeals of that circuit, of the right to proceed in equity, neither of the latter courts dignifying the previous opinion by the Court of Appeals by so much as allusion or reference.

Assuming without conceding that there is anything in the claim of the statute of limitations, as applied to future actions at law, the creditors under the circumstances detailed above should not be forced to meet that position until full opportunity had been given to demonstrate that the equitable remedy was both proper and appropriate.

But, aside from this, the question of right to proceed in equity against the stockholders of a given jurisdiction presents a phase all important, not only in the case at bar but in analogous cases.

It requires no argument to demonstrate to the Court that where in a given jurisdiction fifty or a hundred stockholders reside, the bringing of separate and distinct actions at law is almost prohibitive.

The question of the right of a receiver to join in a suit in equity claims against a number of stockholders was deemed of sufficient importance to be certified to this Court in McDonald vs. Williams, 174 U. S. 397, referred to in the accompanying petition, but was not found necessary to be answered.

Jurisdiction was sustained in a similar case on the ground of avoiding multiplicity of actions by the Court of Appeals of the Sixth Circuit in Bailey vs. Tillinghast, 99 Fed. Rep. 801.

Under the decisions of this Court in repeated actions, the claims of creditors against stockholders were clearly equitable within the rules announced in

Pollard vs. Bailey, 20 Wall. 520-526.

Terry vs. Little, 101 U. S. 216.

Patterson vs. Lynd, 106 U. S. 519.

National Bank vs. Francklyn, 120 U. S. 747,

and were so held and recognized as such by the Court of Appeals of the Third Circuit in its earlier decision above.

By analogy to the decision of this Court in Hancock National Bank vs. Farnham, 176 U. S. 640, the force and effect of the decree rendered in the parent proceeding was to be determined with reference to local law.

As thus determined by the Supreme Court of that state in Hanson vs. Davidson, 73 Minn. 454, the action required to be brought is the original action for the sequestration and distribution of the fund to be derived from the stockholders' liability and the decree entered therein is a final and conclusive determination of the amount (unless impeached for fraud) for which the stockholders are liable.

Equity possesses jurisdiction to entertain an auxiliary bill to enforce that decree, as held by the Court of Appeals of the Third Circuit in its earlier decision.

The ground contended for coincides with the rule announced by this Court in Shields vs. Thomas, 18 How. 253-262, thus: "Amongst the original and undoubted powers of a court of equity is that of entertaining a bill filed for enforcing and carrying into effect a decree of the same or a different court of equity, as the exigencies of the case or the interests of the parties may require."

It is not, however, proposed, and perhaps is inappropriate, to present at this time any detailed discussion bearing upon the question of jurisdiction.

The same question of right to proceed in equity is involved in the other cases pending in the Federal Courts, rendering its final determination here peculiarly appropriate.

All the various causes pending in the several jurisdictions turn, as hereinbefore stated, on the main propositions and principles heretofore suggested. The question of jurisdiction in equity has been, we believe, tinctured by the feeling of hos-

tility and prejudice against enforcing the liability in any form of action whatsoever.

If the principles governing and determinative of the merits be once definitely ascertained, jurisdiction in equity will not be difficult to demonstrate either in the light of principle or authority.

This Court granted a Writ of *Certiorari* to the Court of Appeals for the Second Circuit in the case of Whitman vs. Oxford National Bank, reported in 176 U. S. 559. That case involved the question of the right of extra territorial enforcement of a superadded stock liability created by the laws of the State of Kansas. By those laws and the interpretation of the local courts, the liability created ran to and was enforceable by creditors severally and independently. The questions involved in that case had, at the time of the granting of the Writ of *Certiorari* therein by this Court, been considered and passed upon by the Circuit Courts and Circuit Courts of Appeals in a comparatively large number of circuits. So far as the Federal Courts are concerned, the course of decision in those cases had been practically uniform in favor of the contractual feature of the liability and the right of enforcement thereof in any form wherein jurisdiction of a stockholder might be had or obtained. So far as we are presently advised no precedent existed in the Federal Courts in any of the various districts wherein this liability had come in question opposed to the general conclusions above mentioned.

There is far stronger reason for invoking a review in the case at bar than in the case last cited. Here the various judges and courts have been unable to reach any substantial accord in the general questions involved.

The case here involves a far more equitable rule than that presented by laws similar to those of the State of Kansas, in that it contemplates equal protection for all creditors, while

the laws of Kansas inaugurate a race of diligence and present no features of equitable character whatsoever.

Notwithstanding the obvious equitable character of the liability involved, the very features of the law which commend themselves are made the basis of technical and abstruse objections to prevent its enforcement.

Believing, as stated in the inception of this preliminary brief, that the present application is fully justified by the facts herein and in the accompanying petition stated, we submit the matter to the favorable consideration of the Court, reserving a more detailed presentation until the case is formally before this Court for review.

Respectfully submitted,

M. H. BOUTELLE,

For Petitioner.

W. E. HALE,

CHARLES C. LISTER,

Of Counsel.

No. 290.
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OCT. 9 1901
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Filed Oct. 14, 1901.

OCTOBER TERM, 1901.

No. ~~19016~~. 290.

WILLIAM E. HALE as Receiver,
Petitioner,

against

EDWARD P. ALLISON *et als.*,
Respondents.

To JOHN G. JOHNSON, Esq., attorney for Respondents:

Please take notice that the petitioner in the above entitled cause will present to the Supreme Court of the United States on Monday, October 14, 1901, at the opening of the court on that day, or as soon thereafter as counsel can be heard, a motion to advance the above-entitled cause under and pursuant to the rules of that Court in that behalf made and provided, a copy of which motion is hereto attached.

JOHN F. DILLON.
M. H. BOUTELLE.
A. L. PINCOFFS.
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1901.

No. 18016.

WILLIAM E. HALE as Receiver,
Petitioner,

against

EDWARD P. ALLISON *et als.*,
Respondents.

On Certiorari to the United States Circuit Court of Appeals of the Third District.

Comes now the petitioner, by his counsel appearing in behalf and moves the Court to advance the above-entitled case for hearing.

The grounds of said motion are as follows:

1. That the questions presented in said cause are of general public interest, involving the security to corporate creditors provided by laws of the State of corporate organization in imposing liability for corporate indebtedness upon stockholders.

2. That the particular phases of said questions as here presented and the statutes creating the liability here involved, embrace and comprehend the legislation upon similar subject matter of a number of different States in which proceedings have been had or taken in foreign jurisdictions and in which the United States Circuit Courts and United States Circuit Courts of Appeal in different circuits have pronounced decisions wholly at variance and irreconcilable, as will be illustrated by the following:

Hale *vs.* Hardon, Circuit Court of Appeals of the First Circuit, 95 Fed. Rep., 747.

Kirtley *vs.* Holmes, Circuit Court of Appeals of the Sixth Circuit, 107 Fed. Rep., 1.

Hale *vs.* Allison, Circuit Court of Appeals of the Third Circuit, 106 Fed. Rep., 258.

Wigton *vs.* Bosler, Circuit Court, Third Circuit, 102 Fed. Rep., 70.

National Bank *vs.* Sayward, Circuit Court of Appeals of the First Circuit, 91 Fed. Rep., 443.

Elkhart National Bank *vs.* Northwestern Guaranty Loan Company, Circuit Court of Appeals of the Third Circuit, 87 Fed. Rep., 252.

The details of such conflict, *as applicable to the present cause*, are set forth in the petition for the writ of *certiorari* in this case, a copy of which, for convenience, is annexed and made part of this motion. In support of this statement your petitioner particularly refers the Court to the history of the conflicting litigation arising out of the insolvency of this same corporation, as stated in the said petition for the writ of *certiorari*, on pages numbered 5 to 11 in the copy hereto annexed.

That the questions here presented, and the class of statutory stock liability here involved, have never come before this Court for its consideration or decision.

That the present litigation grows out of the insolvency of the Northwestern Guaranty Loan Company, a corporation created under the laws of the State of Minnesota.

That the stockholders of said corporation were and are scattered throughout diverse States and jurisdictions.

That aside from the litigation here depending, a large number of causes involving similar questions to those here presented, are depending in the Circuit Courts of the United States in and for the respective Districts of Maine, Massachusetts, Rhode Island, Vermont, New York and New Jersey.

That the causes last referred to herein embrace and include liabilities agregating upwards of a quarter of a million dollars, and the same are in various stages before the various courts mentioned. That certain of said causes are for trial upon issues framed in the several Circuit Courts, others have been tried with diverse results as to the merits of the questions involved, and that others are pending before the Circuit Courts of Appeal.

That all of said causes involve the questions here presented for determination, and that the litigation therein has been and is being fostered and encouraged by the diverse and contrary rulings of the courts.

That the cause under consideration presents and involves, amongst other questions, the effect of a judgment and decree rendered by the courts of the State of Minnesota in sequestration proceedings to which the corporation was a party, upon stockholders of the corporation outside that State and who did not appear in the proceedings where such decree was rendered and thus involves the question of "due faith and credit" to the judicial proceedings as provided by Section One, Article Four of the Constitution of the United States.

That a large number of causes growing out of the same corporate insolvency and brought by petitioner herein are depending at the present time in the state courts of various of the States, notably Maine, Rhode Island and New York, wherein the question of "due faith and credit" to the decree of the courts

of the State of Minnesota is directly involved and in all whereof the ultimate determination of that question must be referred to this Court.

That in the administration confided to petitioner and here in part involved, the diversity and contrariety of opinion in the various courts and the litigation thereby entailed has already extended over a period of upwards of four years and the rights of creditors in interest been impaired by protracted contests with the expense necessarily entailed.

That owing to the large number of claims involved in such administration, delay in final and authoritative decision has caused and is causing irreparable damage; that the status of such claims is constantly changing by deaths and insolvencies and claims otherwise collectible are becoming valueless; that in cases of deaths, the rights of petitioner are complicated by the conflict of jurisdiction between the courts of common law and equity jurisdiction and the State courts of Probate for the administration of decedents estates; that in certain causes property has been transferred to evade the liability in question and petitioner and the creditors by him represented are remediless to proceed to protect their interests by inability to obtain judgment or the refusal of the court to enter judgment, where the decision has been favorable to petitioner, until the questions presented on the present *certiorari* are decided by this court.

Forasmuch as the questions here presented for determination are common to all the litigation depending in the various of the United States and State courts, and as the determination thereof will be decisive and controlling on such courts, and as the rights and interests of all the several parties will be best subserved and said several courts be saved needless controversy and litigation.

The present motion is made in order to ask the Court to advance this case for an early hearing to the end that said several questions may be finally and authoritatively determined and that further delay and needless and unnecessary litigation may be avoided and that petitioner may have the benefit of the provisions of Rule 26 of this Court, permitting the advancing of cases.

Respectfully submitted,

JOHN F. DILLON,
M. H. BOUTELLE,
A. L. PINCOFFS,
Attorneys for Petitioner.

Copy of Petition for Certiorari referred to in the foregoing Motion.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

Petitioner.

IN THE MATTER OF THE PETITION FOR WRIT OF *CERTIORARI* REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT TO CERTIFY TO THE SUPREME COURT FOR ITS REVIEW THE CASE OF

W. E. HALE, Receiver,

Appellant,

vs.

EDWARD P. ALLISON *et al.*,

Appellees.

To the Honorable The Supreme Court of the United States:

The petition of W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), respectfully shows to this Honorable Court as follows:

That the Northwestern Guaranty Loan Company was, at all times hereinafter mentioned, a corporation organized under the general laws of the State of Minnesota.

That the laws of that state, and more particularly the Constitutional provisions thereof, impose personal liability upon the stockholders of all corporations of the class of said Northwestern Guaranty Loan Company, for the corporate debts, in an amount not exceeding the amount of the par value of the stock held by each.

That the liability thus created as interpreted by the decisions of the highest courts of that state is contractual, runs to all and several the corporate creditors in common, and contemplates the creation of a fund for the equal benefit of all such creditors.

That the remedial laws of said state, as interpreted by the highest court thereof contemplate primary jurisdiction for the purpose of enforcing this stock liability in the courts of corporate domicile, and for that purpose provide for the institution therein of an equitable action by corporate creditors for obtaining an account of the debts and assets of the corporation, determining the deficiency, if any, of the latter, and apportioning such deficiency amongst all stockholders in common, according to their respective holdings of stock, and not exceeding in any event the maximum liability provided by law.

That by said remedial laws provision is further made in analogy to the rules and practice of courts of equity for giving notice of the pendency of such case to all creditors and limiting the time within which such creditors shall intervene therein or be barred from participation in the recovery and fund thereby contemplated.

That further provision is made by said laws authorizing and empowering the court to appoint a receiver or receivers for the purpose of effectuating and carrying out the purposes thereof.

As further interpreted by the courts of that state the provisions incorporated in the laws aforesaid, both those imposing the liability and those prescribing the conditions whereon it may be made available, are impliedly incorporated in the contract consummated by the stockholders in the act of subscribing or taking stock and mutually binding upon stockholder and creditor alike. In consequence whereof it is held that the creditor may avail himself of the liability in no other manner than in a proceeding calculated to preserve and protect the rights of all creditors in common and may not proceed in his own individual behalf.

And it is further held in consequence of the same contractual theory that the ascertainments contemplated to be made by the court in the original proceeding by the creditors, upon which the liability may be made available, viz.: the debts, assets, the deficiency of the latter and the amount in which all stockholders in common shall be assessed to make good such deficiency, are final and conclusive on all corporate stockholders whether parties to the original proceeding and served with process therein or not.

Your petitioner further avers that in 1893, in proper proceedings had to that end in the courts of the State of Minnesota, and in accordance with the laws of that state, the Northwestern Guaranty Loan Company was adjudged insolvent and a receiver appointed for the purpose of winding up its affairs.

That thereafter, and in conformity to the local laws of that state, hereinbefore mentioned, a suit was duly instituted by and on behalf of the several

creditors of that corporation, against the corporation, its general receiver, and all and several the stockholders thereof.

That pursuant to the order of the Court therein some six or seven hundred creditors from many and diverse states holding claims and demands against the corporation aggregating upwards of three million dollars duly intervened therein.

That process issued against the corporation, its general receiver in insolvency, and all and several the stockholders residing within the State of Minnesota.

That thereafter such proceedings were had in conformity to the laws of that state in the cause last aforesaid, that a decree was entered therein adjudging and decreeing, amongst others, that the maximum liability provided by the law of that state, as hereinbefore stated, be enforced against all corporate stockholders in common, and that to that end your petitioner was duly appointed and qualified as receiver and was duly authorized and empowered to take such steps as might be necessary in the premises for the purpose of enforcing and collecting such ascertained liability.

That the indebtedness ascertained by said decree as due and owing to the creditors intervening therein was upwards of three million dollars, as aforesaid, for which judgment was duly rendered against the said corporation.

That the assets and securities in anywise available for the payment of said indebtedness, as ascertained by said decree, was four hundred and fifty thousand dollars, and the deficiency upwards of two million five hundred thousand dollars.

That the total par value of outstanding stock (and therefore the maximum measure of stock lia-

bility) was one million two hundred and fifty thousand dollars, or less than one-half the ascertained deficiency.

Your petitioner further avers that said stock was, at all the times herein referred to, held by some five hundred different parties and corporations of whom approximately five-sixths in amount and upwards of four hundred in number resided, during all the times herein mentioned, without the State of Minnesota.

That the residences of such stockholders embrace many and diverse jurisdictions, including herein the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, and other states not here necessary to mention.

That subsequent to the proceedings had and taken, as hereinbefore stated, in the said courts of Minnesota, and the rendition and entry of the decree in that cause, as hereinbefore stated, various actions and proceedings were instituted in several of the aforesaid jurisdictions outside the State of Minnesota for the purpose of enforcing the aforesaid stockholders' liability.

That amongst said several proceedings, so instituted as aforesaid, an original bill in equity was filed in the United States Circuit Court in and for the Eastern District of Pennsylvania, by a judgment creditor of the said Northwestern Guaranty Loan Company, in behalf of itself and all other creditors who should join or participate therein, and against all and several of the stockholders of that corporation residing in and citizens of the commonwealth of Pennsylvania.

That thereafter such proceedings were had in said cause that a demurrer was interposed therein, by and on behalf of the several defendants, and a decree entered in said Circuit Court dismissing com-

plainant's bill, from which an appeal was thereafter perfected to the Court of Appeals of the Third Circuit. That upon said appeal the last named Court of Appeals held, substantially, that no jurisdiction existed in a court outside of the State of Minnesota to enforce in an original proceeding the liability imposed on corporate stockholders by the Minnesota laws; that those laws contemplated investing the courts of the domicile with primary jurisdiction in the premises, and that the proceedings to determine the necessity for the amount in which the liability should be enforced should be had in such domiciliary courts, and thereafter as against non-resident stockholders relief might be obtained in an auxiliary proceeding in equity against stockholders in foreign jurisdictions.

(Elkhart Natl. Bank *vs.* Northwestern Guaranty Loan Co., 87 Fed. Rep., 252.)

That the holding of the said Court of Appeals of the Third Circuit, in so far as it adjudicated and determined that an original bill would lie not in a foriegn jurisdiction for the purpose of enforcing liabilities of the class in question, is in substantial accord with the similar conclusions of the Court of Appeals of the First Circuit in National Bank *vs.* Sayward, 91 Fed. Rep. 443.

That in accordance with the holding of the Court of Appeals for the Third Circuit above, determining, as aforesaid, that remedy might be had by auxiliary proceeding in equity after a decree of the domiciliary court determining the necessity for and amount in which all stockholders should be held to contribute, to enforce that decree, your petitioner caused to be filed in the Circuit Court for the Eastern District of Pennsylvania such an auxiliary bill against the several stockholders, residents and citizens of that jurisdiction.

That thereafter such proceedings were had that the several defendants in said bill interposed common demurrers, challenging, (1) the jurisdiction of a court of equity, (2) the right of your petitioner to sue, (3) the effect of the Minnesota decree, and (4) the right to relief on the merits, all as will more fully appear from the certified copy of the record herewith produced and accompanying this application. That upon the hearing of said demurrers it was held and determined by the Circuit Court that no jurisdiction in equity existed, no reference being made in the decision to the conclusions and the previous holding of Court of Appeals of that circuit in the case of Elkhart National Bank *vs.* Northwestern Guaranty Loan Company, *supra*, growing out of the insolvency of the same corporation, involving the same liability and the same foreign laws.

That upon the aforesaid determination of the Circuit Court, a decree was entered in said cause dismissing your petitioner's bill without prejudice, and therefrom an appeal was duly taken to the Court of Appeals of the Third Circuit, as will more fully appear from the record herein.

That upon said record the cause came on for hearing before the Court of Appeals of the Third Circuit and resulted in an affirmance of the decree of the Circuit Court for want of jurisdiction in an equitable proceeding and practically deciding that the several demurrers as presented might have been sustained upon the merits without regard to the jurisdictional feature.

From the decision of the Court of Appeals last referred to, your petitioner presents this application for *certiorari* directed to the Court of Appeals of the Third Circuit.

The grounds of this application are as follows:

First. The importance of the general questions involved herein, and

Second. The hopeless and irreconcilable confusion evidenced by the decisions in the various circuits, between the Circuit Courts of Appeals, as well as the Circuit Courts and Circuit Courts of Appeals of different circuits.

Your petitioner further shows and states to the Court that suits or actions are now pending in all the several jurisdictions hereinbefore referred to, involving the questions here sought to be reviewed and growing out of the insolvency of this same corporation.

Your petitioner further shows that in a certain action heretofore instituted at law, by your petitioner, as receiver as aforesaid, in the Circuit Court for the District of Massachusetts to enforce the liability in question, the decision of the court practically denied a right or remedy to enforce the liability in any form of action whatsover. (Hale *vs.* Hardon, 89 Fed. Rep., 283.)

That on writ of error to the Circuit Court of Appeals of the First Circuit, that decision was reversed by a divided court and the right held enforceable and the remedy held properly conceived.

(Hale *vs.* Hardon, 95 Fed. Rep., 747.)

That thereafter, and subsequent to the last decision of the Court of Appeals of the First Circuit, in a case involving similar laws and presenting similar questions arising in the Circuit Court for the Eastern District Pennsylvania wherein the opinion was delivered by Mr. Circuit Judge Dallas (by whom the opinion in the Court of Appeals in this case was written), the Circuit Court of Pennsylvania expressly declined to follow the Circuit Court of Appeals of the First Circuit and denied the right to enforce the liability. (Wigton *vs.* Bosler, 102 Fed. Rep. 70.)

Your petitioner further shows that the decision of the Court of Appeals in the case here sought to be reviewed practically follows Wigton *vs.* Bosler and is diametrically opposed in this regard to the decision of the Court of Appeals of the First Circuit in Hale *vs.* Hardon, *supra.*

Your petitioner further avers that said cause, as presented by the bill and demurrers to the Circuit Court and Circuit Court of Appeals herein, covered and embraced as will more fully appear from the accompanying records, on the merits, the following propositions, viz.:

1st. The right of your petitioner, as receiver, to sue in a jurisdiction outside of that by which he was appointed.

2d. The effect, as conclusive or otherwise, of the proceedings had in the courts of corporate domicile on non-resident stockholders.

3d. The right to enforce a liability of this class in any method or form of procedure in a jurisdiction outside of that by which the corporation was created.

And your petitioner further avers that each and all of said several questions are involved in various litigations now pending in the Federal Courts of the various jurisdictions hereinbefore indicated, as well as in the cause at bar.

Your petitioner further avers that in each of said causes, as well as that here pending, the first question above, viz.: the right of the receiver to sue, has presented and given rise to conflict of opinion, based upon the proper interpretation of previous decisions of this court, notably Booth *vs.* Clark, 17 How. 323, and Relfe *vs.* Rundell, 103 U. S. 322, as indicated by the opinion of the Court of Appeals in the cause here sought to be reviewed, as well as the Court of Appeals of the First Circuit therein decided and hereinbefore referred to.

That upon the second and third questions above, viz.: the effect of the proceedings of the Minnesota Court, the case in principle is, as your petitioner believes, covered by the decisions and precedents of this Honorable Court, but in the absence of direct precedent impracticable distinctions are suggested rendering the principles enunciated by this court inapplicable.

Your petitioner further avers that jurisdiction in equity in the case at bar was clearly sustainable on each and all the following grounds, viz.:

1st. That the right asserted and sought to be enforced as determined and interpreted by the local law of the state by which the same was so created was equitable in character.

2d. That the proceeding had for its end and object the enforcement of an equitable decree, and that within the principles announced by this Honorable Court, in the case of Hancock National Bank *vs.* Farnum, 176 U. S. 640, the decree rendered in the local courts of Minnesota, while not equivalent to a personal judgment against stockholders not served with process or appearing in that cause, was a *quasi* decree against all corporate stockholders, in so far as it determined the necessity for and amount in which all stockholders should be held to contribute, and was therefore a decree which a court of equity possessed jurisdiction to enforce.

3d. That sufficient ground for the interposition of equity was shown in the common origin of the claims and the similarity of the questions of law and fact involved therein, thus bringing the case clearly within that branch of equitable jurisdiction having for its end and object the prevention of a a multiplicity of suits.

Your petitioner further avers that error was assigned, as more fully appears from the record ac-

companying this petition, in the Court of Appeals, to the denial of jurisdiction in equity upon each of the grounds aforesaid, and to the refusal of the Court to sustain the bill on the merits.

That jurisdiction on the first two grounds was clearly held in the previous decision of the same Court of Appeals in Elkhart National Bank *vs.* Northwestern Guaranty Loan Company, *supra*, in conformity with the direction whereof the present suit was instituted in that circuit.

That upon the third ground, without regard to numerous precedents which might be cited, the case was fully covered by the decision of the Court of Appeals of the Sixth Circuit in Bailey *vs.* Tillinghast, 90 Fed. Rep., 801, to which the decision in the cause under consideration is diametrically opposed on the question of jurisdiction.

Your petitioner further avers that this cause, as presented to the Court of Appeals of the Third Circuit, involving the right of a receiver appointed by a court of a foreign jurisdiction to join, in one proceeding, demands against a number of stockholders having the same origin and presenting similar questions of law and fact, is substantially parallel with the question certified by the Court of Appeals of the Second Circuit to this Honorable Court, but not found necessary to be answered, in the case of McDonald *vs.* Williams, reported in 174 U. S., 397.

Your petitioner further avers that all and several the questions herein suggested may be appropriately passed upon and finally decided by this Court on review of the decision of the Court of Appeals of the Third Circuit herein. And that by such decision an immense amount of litigation now pending and undetermined in various of the Circuit Courts of the United States growing out of the

same insolvency as that here involved, and presenting the same questions of law and fact, will be relieved of the conflict and embarrassment arising out of the diversity of opinion announced by the various courts in these causes, as hereinbefore stated. That unless said questions be so finally passed upon and determined, the enforcement of the rights of the creditors of this insolvent corporation is confronted by a multitude of litigation, in and of itself practically prohibitive, by reason of the inability of the various courts to determine and agree on the basic principles involved.

Your petitioner further shows and states to the Court, that jurisdiction in the said cause here under consideration was invoked on the ground of diversity of citizenship, and that the decision of the Court of Appeals under the Act of Congress creating that Court, approved March 3, 1891, is final.

WHEREEORE, Your petitioner respectfully prays that a Writ of *Certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the said cause therein entitled W. E. Hale, as Receiver, Appellant, *vs.* Edward P. Allison, *et al.*, Appellees, to the end that the said case may be reviewed and determined by this Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate. And in conformity with Section 6 of the Act of Congress, entitled "An act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, and

that said decision and judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will forever pray, etc.

W. E. HALE,

Receiver for the collection and enforcement of the liability of stockholders.

By W. H. BOUTELLE,
Attorney and Counsel for Petitioner.